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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,216	07/23/2001	Davis Foulger	EMPIR-024AUS	4900

22494 7590 10/22/2004

DALY, CROWLEY & MOFFORD, LLP  
SUITE 101  
275 TURNPIKE STREET  
CANTON, MA 02021-2310

EXAMINER

TAYLOR, NICHOLAS R

ART UNIT PAPER NUMBER

2141

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/911,216	FOULGER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nicholas R Taylor	2141	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07/23/2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>08/27/2002</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. Claims 1-26 have been examined and are rejected.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 9-12, 14-15, 16-20, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton et al. (US Patent number 6,763,380) and further in view of Hsu et al. (US Patent number 6,098,157.)

4. As per claim 1 and 16, Mayton teaches a computer program product for backtracing network performance (Mayton, column 5 lines 26-31 and Fig. 1), the computer program product comprising a computer usable medium having computer readable code thereon, including program code comprising:

instructions for causing a processor to perform as a web monitor, said web monitor performing a network backtrace on said addresses (Mayton, column 5 lines 32-39); and

Art Unit: 2141

instructions for causing a processor to perform as a client, said client collecting and processing data resulting from said network backtrace, said client presenting results of said processing (Mayton, column 6 lines 1-12, wherein the console is a client on the network).

However, Mayton fails to teach specifically using a source address from a packet received from a network. Hsu teaches capturing a source address of a packet received from a network (Hsu, column 3 lines 47-55 and column 4 lines 3-7.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Hsu and Mayton because doing so would allow analyzing and improving transmission on the network. This is stated as referenced in the art (Hsu, column 1 lines 20-23.)

5. As per claim 2 and 17, Mayton teaches the system further comprising instructions for causing a processor to access a database, said database storing data captured by said web monitor (Mayton, column 10 lines 37-41, where a database is inherent in the storage device.)

6. As per claim 3 and 18, Mayton teaches the system further comprising instructions for causing said client to perform a reporting function (Mayton, column 10 lines 45-50.)

Art Unit: 2141

7. As per claim 4 and 19, Mayton teaches the system further comprising instructions for causing said client to perform an administrative function (Mayton, column 11 lines 19-32, wherein "user input" allows administrative functions on the route analysis module.)

8. As per claim 5 and 20, Mayton teaches the system wherein said backtrace extends to a system selected from the group consisting of an end-user machine, a firewall and a router (Mayton, column 5 lines 33-40, wherein a firewall and router are network devices.)

9. As per claim 9, Mayton teaches the system further comprising instructions for causing said product for backtracing network performance to include a plurality of intervals (Mayton, column 11 lines 60-67, wherein the time period is an interval.)

10. As per claim 10, Mayton teaches the system wherein one of said intervals comprises a write interval (Mayton, column 13 lines 21-32, wherein a traceroute involves writing.)

11. As per claim 11, Mayton teaches the system wherein one of said intervals comprises a trace interval (Mayton, column 13 lines 21-25.)

Art Unit: 2141

12. As per claim 12, Mayton teaches the system wherein one of said intervals comprises a prune interval (Mayton, column 13 lines 57-61, wherein grouping prunes the results.)

13. As per claims 14 and 25, Mayton teaches the system wherein each new address within a write interval is time-stamped (Mayton, column 13 lines 33-37, wherein the traceroute information contains the address in the write interval.)

14. As per claims 15 and 26, Mayton teaches the system wherein the first time a particular address is captured within a trace interval a traceroute operation is run on said address (Mayton, column 12 line 60 to column 13 line 9, and fig. 4, wherein the network performance measurements contain a traceroute operation in the trace interval.)

15. Claims 6-8 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton et al. (US Patent number 6,763,380) and Hsu et al. (US Patent number 6,098,157), and further in view of Shah et al. (US Patent number 6,446,121.)

16. As per claim 6 and 21, Mayton and Hsu teach the system further comprising instructions for causing a processor to capture a plurality of packets, for identifying packets within said plurality of packets, for extracting source addresses from said

Art Unit: 2141

packets, and for extracting destination addresses from said packets (Hsu, column 3 lines 47-55 and column 4 lines 3-7).

However, Mayton and Hsu fail to teach the specific use of SYN packets. Shah teaches using SYN packets to determine round trip times (Shah, column 6 lines 3-18.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Shah with Mayton-Hsu because doing so would give a method for measuring round trip time in a network. This is stated as referenced in the art (Shah, column 5 lines 60-63.)

17. As per claims 7 and 22, Mayton teaches the system further comprising instructions for causing said monitor to trace the network routes back to said captured source address (Mayton, column 5 lines 26-39, wherein the destination endpoint node is the captured source address.)

18. As per claims 8 and 23, Mayton teaches the system further comprising instructions for causing said monitor to observe the performance of the network on the path from said source address to said client (Mayton, column 5 lines 26-39, wherein the destination endpoint node is the source address and the originator is the client.)

19. Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton et al. (US Patent number 6,763,380) and Hsu et al. (US Patent number 6,098,157), and further in view of Buchholz et al. (US Patent number 5,493,569.)

20. As per claim 13 and 24, Mayton and Hsu teach the system wherein a user address is new within a write interval said user address is processed as a new user address (Mayton, column 12 lines 60-66 and fig. 4, wherein the start of operations on a new device is processing a new user address).

However, Mayton and Hsu fail to teach the specific use a request counter when a user request has already occurred. Buchholz teaches the use of a counter to determine duplicate requests from a user module (Buchholz, column 9 lines 15-17.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Buchholz with Mayton-Hsu because doing so would reduce the likelihood of request traffic contention. This is stated as referenced in the art (Buchholz, column 9 lines 40-43.)

### ***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This includes US Patent 6,578,087.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas R Taylor whose telephone number is (703) 605-4326, or after November 1<sup>st</sup>, (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

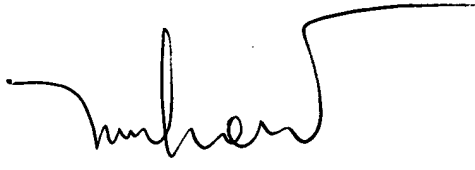


Art Unit: 2141

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nicholas Taylor  
Assistant Examiner  
Art Unit 2141

  
A handwritten signature in black ink, appearing to read 'Le Hien Luu', is written over a horizontal line.

LE HIEN LUU  
PRIMARY EXAMINER